

CHAPTER 26

STREETS AND SIDEWALKS

- Art. I. In General, §§26-1 - 26-27
- Art. II. Street Excavations, §§26-28 - 26-32
- Art. III. Loudoun Street Mall, §§26-33 - 26-37
 - Division 1. Generally, §26-33
 - Division 2. Sidewalk Cafes, §26-34 - 26-37

ARTICLE I. IN GENERAL

SECTION 26-1. CERTAIN ORDINANCES RELATING TO STREETS NOT AFFECTED BY CODE.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance opening, relocating, closing, altering, or naming any streets or alleys, and all such ordinances are recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

SECTION 26-2. VIOLATIONS OF CHAPTER.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class 4 misdemeanor.

SECTION 26-3. STREET NUMBERS FOR BUILDINGS.

- (a) All principal structures upon the streets within the City shall be numbered by the Planning Director, or his or her designee, upon the centenary plan. Beginning at the axis of reference and moving therefrom, the buildings and lots upon any particular street shall be numbered beginning with the number "1" in the first block and the number "100" in the second block extending away from the point of origin, generally allowing one number for every twenty-five (25) to fifty (50) feet. A new hundred shall generally begin whenever a particular street is crossed by another street. Odd numbers shall be placed upon the west and south sides of the streets, and even numbers upon the east and north sides. Numbers assigned prior to the adoption of this ordinance may remain unchanged.
- (b) The axis of reference for streets running north and south shall be Boscawen Street, Grove Street, and projections thereof. The axis of reference for streets running east and west shall be Loudoun Street from the northern Corporate Limits to Papermill Road, Papermill Road from Loudoun Street to the intersection of the B & O Railroad, and the B & O Railroad from Papermill Road to the southern

WINCHESTER CODE

Corporate Limits. All numbers shall run north and south or east and west of the reference axis. Streets which have a change in direction from their original course shall continue to be consecutively numbered in accordance with the direction of the street at its point of origin. Point of origin shall be defined as the end located nearest the reference axis, without regard to the change of direction.

- (c) The owners of all principal buildings within the City shall affix and maintain on such buildings address numbers assigned in accordance with the uniform numbering systems prescribed by this section and reflected on the official numbering system map. All Arabic numbers or alphabet letters shall be placed in a conspicuous place or places on the building, facing the street from which the building is numbered. In instances of buildings with alley access, numbers or letters shall also be placed on the building facing the alley from which access is provided. When building numbers are not readily visible from the street, auxiliary numbers shall be placed on a sign near the street and directional arrows placed at intervals as required to assure rapid approach to each building.
- (d) Address numbers shall be Arabic numbers or alphabet letters. Numbers/letters shall be a minimum of four inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm); of a color contrasting to that of the structure on which same are affixed; and placed in a position to be plainly legible and visible from the street or road fronting the property.
- (e) Whenever any principal building is erected within the City, it shall be the duty of the owner to obtain the correct number from the Planning Director, or his or her designee, and to subsequently affix the appropriate numerals in the manner provided by this section.
- (f) No person shall deface, alter, or remove numbering affixed to a principal structure in accordance with this section.
- (g) The owner of each building which contains more than one unit, whether the units are rented or individually owned, including individual apartments, rental rooms, offices, and any other commercial units shall permanently affix and maintain unit numbers on such building at the entrance(s) to the building. The number for each unit shall be placed over or to the side of the principal entrance giving access to the unit so identified. The size of the numbers required by this subsection shall comply with the requirements of subsection (d).
- (h) In addition to requirements of subsection (g), the number identifying each unit shall be permanently affixed to the principal door giving access to the rental unit whether the door is in the interior of the building or is an exterior door. The size of the numbers required by this subsection shall be a minimum of two inches in height and shall be of a color contrasting to that of the door on which they are affixed. If the number of a unit with principal access from the exterior of the

STREETS AND SIDEWALKS

building is attached to the exterior door of the unit, the owner need not place additional numbers for that rental unit at other entrances to the building.

- (i) Violations of this section shall be subject to civil penalties established in Section 6-8 of this Code. (Code 1978, Ord. No. 006-85; Ord. No. 042-95, 9-12-95; Ord. No. 008-96, 04-09-96; Ord. No. 018-98, 7-14-1998; Ord. No. 035-2003, 11-11-03; Ord. No. 022-2005, 6-14-05)

Charter references--Licensing and taxation for privilege of using streets, alleys, and other public places, §1.01; general council powers relative to streets and sidewalks, §17.

Cross references--Abandoning domestic animals on street or road, §5-7; depositing dead animal on street or sidewalk, §5-9; traffic, Ch. 14; disorderly conduct in streets, §16-6.1; planning, Ch. 19; railroads, Ch. 22; begging on city streets, §24-1; construction of water and sewer mains, §29-4; trees growing in or on streets and other public property; §30-16 *et seq.*; vehicles for hire, Ch. 31.

State Law References--General authority of city relative to streets and sidewalks, Code of Virginia, §§15.2-2001, 15.2-2015, 15-2024.

Building Code Reference—Virginia Uniform Statewide Building Code, 2000

THIS PAGE INTENTIONALLY LEFT BLANK.

STREETS AND SIDEWALKS

SECTION 26-4. ESTABLISHED BUILDING AND CURB LINES AND STREET AND SIDEWALK GRADES.

Upon the application of any owner of a lot fronting upon a public street within the corporate limits of the City, the council committee on streets shall define the building line and curb line and the adopted grade of the street and sidewalk opposite the lot of such applicant. Any party interested may appeal to the council from the ruling of the street committee under this section within thirty (30) days thereafter. The grade and building line and curb line as adopted shall be recorded by the city engineer in his office. (Code 1959, §20-17; Ord. of 6-14-78).

SECTION 26-5. WIDTH AND HEIGHT OF SIDEWALKS.

The council committee on streets may so regulate the width and height of the sidewalk of any public street as shall, in its judgment, be most conducive to the public convenience and interest of the city. (Code 1959, §20-16).

SECTION 26-6. IMPROVEMENTS TO EXISTING STREETS GENERALLY.

- (a) The City Council, by action of the Public Works Committee, may agree with the property owners on both sides of any one or more complete blocks of an existing street for the improvement of the street by the City.

The agreement shall provide that all property owners on both sides of the street along each complete block shall pay fifty (50) percent of the cost of the improvements, plus the cost of all sidewalks and other improvements required by the Public Works Committee.

The term "block", for the purposes of this section, shall include not less than the full width of the street, the length to be determined by the city manager and the Public Works Committee.

This section shall apply only to streets used by such property owners at the time of application for ingress and egress to existing residential dwellings, or commercial or other structures located on the properties abutting the portion of the street to be improved.

- (b) No street construction shall begin on an existing street unless such street is contiguous to or the extension of a street improved to city standards.
- (c) The application referred to in subsection (a) above shall be filed in the office of the city manager and shall be considered by the Public Works Committee and approved or disapproved as the committee may, in its discretion, see fit.

WINCHESTER CODE

- (d) On corner lots of existing streets where the frontage has all improvements completed or contracted for, the city shall pay fifty (50) percent of the cost of street improvements when the abutting property owners have agreed in writing to pay outright to the city fifty (50) percent of the cost of construction, plus the cost of the sidewalks and other improvements, if required. (Code 1959, §§22-3, 22-11, 22-14)(Ord. No. 032-89, 11-14-89; Ord. No. 042-95, 9-12-95)

Cross references--Street and other improvements paid for by local assessment, §2-11; building permit on existing street not to be issued until applicant agrees to pay his share of cost of street improvements, §6-17; construction of water and streets, §29-4.

State Law References--Assessments for local improvements, Code of Virginia, §§15.1-239 - 15.1-249.1.

SECTION 26-7. PAVING, REPAVING, AND REPAIRING SIDEWALKS ON EXISTING STREETS.

- (a) Every owner or occupier of lots or parts of lots abutting on existing streets in the city shall cause the existing sidewalks and driveway entrances to be paved, repaved, or repaired at the expense of such owner or occupier.
- (b) The public works department shall notify the owners or occupiers of lots or parts of lots abutting on existing streets to pave, repave, or repair the sidewalks when required. Such notice shall be by registered or certified letter sent to such owner or occupier at his last known address or served by a member of the police department. If, after diligent inquiry, no address can be found for such owner, such letter shall be posted in a conspicuous place on the property.
- (c) In the event an owner or occupier or either of them shall neglect or refuse to pave, repave, or repair the sidewalk when required pursuant to this section, the council may have such sidewalk paved, repaved, or repaired and recover the expenses therefor before the general district court or the circuit court, and in all cases where a tenant is required to pave in front of the property used in his occupation, the expenses of the paving so done shall be a good offset against so much of the rent as he shall have paid toward such paving, but no tenant shall be required to pay more for or on account of such paving than such tenant may owe at the time of the commencement of such work or as may become due to the end of his tenancy.
- (d) No owner or occupier of a lot or lots in front of which paving has been laid shall be required to repave or repair such sidewalk, in whole or in part, at his own expense more often than once in five (5) years; provided, further, that the expense for such paving, repaving, and repairing shall not be in excess of the peculiar benefits resulting therefrom to such abutting land. (Code 1959, §22-21.3; Ord. of 6-14-78) .

STREETS AND SIDEWALKS

- (e) Curb ramps shall be constructed at intersections for use of handicapped persons. No ramps shall be required for curbs in place on January 1, 1975; however, ramps shall be required on all replacement of such curbs adjoining sidewalks at intersections leading to crosswalks. Such ramps shall comply with the Virginia Department of Transportation's Road and Bridge Standards. This section shall not apply where finalized plans for replacement of curbs had been advertised for bid, contracts awarded, and work commenced prior to June 30, 1975. (Ord. No. 042-95, 9-12-95)

Charter reference--Assessments for paving of sidewalks §17.

State Law Reference--Code of Virginia, §15.1-381.

SECTION 26-8. PAVING OF DRIVEWAY ENTRANCES.

- (a) Whenever, in order to enter a garage, driveway, private alley or parking lot, it is necessary to cross a sidewalk curb or the shoulder on unimproved portions of a city street, such crossing shall be constructed, after first obtaining an approved driveway entrance permit, with a pavement suitable for the purpose, in accordance with the rules and regulations of the city.
- (b) It shall be unlawful for any person to fail, neglect or refuse to provide such pavement after an approved permit or notice is received from the public works department. (Code 1959, §22-20; Ord. of 6-14-78)

SECTION 26-9. ALLOWING FLUID TO DRAIN ONTO STREET.

It shall be unlawful for any person to permit waste water or any fluid to drain or run into any public street of the city. (Code 1959, §22-25) .

SECTION 26-10. DEPOSIT OF INJURIOUS OR HAZARDOUS MATERIALS ON STREETS AND REMOVAL OF SAME.

- (a) No person shall throw or deposit, or cause to be deposited, upon any street or highway, any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person or animal or damage any vehicle upon such street or highway, nor shall any person throw or deposit, or cause to be deposited, upon any street or highway, any soil, sand, mud, gravel, or other substances so as to create a hazard to the traveling public.

WINCHESTER CODE

- (b) Any person who drops, or permits to be dropped or thrown, upon any street or highway any destructive, hazardous, or injurious material shall immediately remove the same or cause it to be removed.
- (c) Any person removing a wrecked or damaged vehicle from a street or highway shall remove any glass or other injurious substance dropped upon the street or highway from such vehicle
- (d) Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor (Code 1959, §15-21)(Ord. No. 042-95, 9-12-95)

Cross reference--Littering streets, §11-3.

State Law Reference--Similar Provisions, Code of Virginia, §18.2-324.

SECTION 26-11. SPILLING VEHICLE LOAD ON STREETS.

- (a) All vehicles hauling ashes, coal, dirt, rock, rubbish, refuse or any other material along or over any street of the city shall be so constructed, loaded, covered, and kept in such tight and secure condition as to prevent the spilling or throwing from the wheels or any part of such vehicles any unclean or unsightly matter upon the streets.
- (b) Any such matter spilled or thrown from the wheels or any part of such vehicle shall be immediately removed or cleaned from the street by the operator of the vehicle or other person responsible for such cluttering of the streets.
- (c) It shall be unlawful for any person to operate or cause or permit to be operated any vehicle as is herein mentioned in any manner other than as is herein stipulated. Any person violating any provision of this section shall be guilty of a Class 1 misdemeanor.
- (d) The City, in order to expedite removal of any matter spilled or thrown onto the street, may have such matter removed, and the cost of removal shall be billed to the owner of the vehicle. (Code 1959, §10-9; Ord. of 6-14-78).

SECTION 26-12. DEPOSITING MUD, ROCK, ETC. ON SIDEWALKS.

It shall be unlawful for the owner or occupant of any building or lot of land abutting on any paved sidewalk to deposit or permit the accumulation thereon of any mud, earth, rock, stones or other matter that may endanger human life or bodily safety.
(Code 1959, §22-24.1).

STREETS AND SIDEWALKS

SECTION 26-13. OBSTRUCTING GUTTERS GENERALLY.

It shall be unlawful for any person to place a bridge or any other obstruction in or over any gutter upon any street in the city. (Code 1959, §22-23).

SECTION 26-14. DUTY OF PROPERTY OWNERS OR OCCUPANTS TO KEEP GUTTERS, STORM DRAINS, ETC., OPEN AND FREE FROM OBSTRUCTION.

Every owner and occupant of a house or lot shall, as far as such lot extends, cause the paved gutter, storm drain and other portions of the street adjoining thereto to be constantly kept open and clear from obstruction. (Code 1959, §22-22; Ord. of 6-14-78)

SECTION 26-15. DUTY OF PROPERTY OWNERS OR OCCUPANTS TO REMOVE SNOW AND ICE FROM SIDEWALKS.

- (a) The tenant or occupant or, in case there shall be no tenant or occupant, the owner or any person having the care of any building or lot of land abutting on any curbed or paved sidewalk within the corporate limits of the city shall, if in the daytime, within two (2) hours after any snow or sleet has ceased to fall and, if in the nighttime, before 9:00 a.m. on the day succeeding, cause the same to be removed from such sidewalk; provided, that sleet or ice, when it cannot be removed without injury to the pavement of the sidewalk, shall be covered within the same period of time with sawdust, ashes or some other material which will render the sidewalk safe for travel.
- (b) Where conditions set forth in subsection (a) above are not complied with, and the street on which the property is located has been plowed by the City's forces or agents, the chief of police or his designee shall immediately notify the tenant, owner or occupant, and such notification shall be served by a member of the police department.
- (c) If the conditions set forth in subsections (a) and (b) above are not complied with within twenty four (24) hours from the time of the notification, the chief of police may cause the tenant, owner or occupant to be charged with a violation of this section.
- (d) If after twenty-four (24) hours from the time of notice provided in subsection (b) the conditions set forth in subsection (a) are not complied with, the City may cause the conditions to be complied with. The cost thereof shall be charged to and collected from the owner, occupant or occupants of the property affected in any manner provided by law for the collection of state and local taxes. (Code 1959, §22-21; Ord. of 6-14-78)(Ord. No. 042-95, 9-12-95)

WINCHESTER CODE

State Law Reference--Authority for above section, Code of Virginia, §15.1-867.

SECTION 26-16. SNOW OR ICE NOT TO BE SHOVELED OR DEPOSITED ON TRAVEL LANES OF STREETS.

It shall be unlawful for the owner, occupant or any person having the care of any building or lot abutting on any street within the city or any other person to shovel or deposit any snow, ice or sleet into the travel lanes of the public streets. (Code 1959, §22-21.1; Ord. of 6-14-78)

SECTIONS 26-17 - 26-27. RESERVED.

ARTICLE II. STREET EXCAVATIONS

SECTION 26-28. PLAN APPROVAL.

Prior to beginning any excavation work in the paved or surfaced streets of the city, every applicant therefor shall submit a plan for each excavation. All such plans must be approved by the department of public works before excavation is begun. (Code 1959, §22-26; Ord. No. 031-81, 12-8-81)

SECTION 26-29. RESERVED.

SECTION 26-30. PROSECUTION AND SUPERVISION OF WORK; BACKFILLING AND REPLACEMENT OF SURFACE OR PAVEMENT.

- (a) Excavations in the paved or surfaced streets of the city shall be made and filled in and the surface or paving replaced by the person filing an approved plan under this article, under the supervision and to the satisfaction of the city engineer; provided, that the city reserves the right, if it so elects, to replace the surface or paving removed, at the expense of the person who performed the excavation.
- (b) Excavations in the public streets of the city shall be made, refilled and the surface or paving replaced without unnecessary delay. In the event of such delay, the city may refill the excavations and restore the surface or paving and charge the cost

STREETS AND SIDEWALKS

thereof against the person filing an approved plan under this article. (Code 1959, §§2-27 - 22-29; Ord. of 6-14-78)

SECTION 26-31. BARRIERS.

Any person making an excavation pursuant to an approved plan under this article shall cause the same to be guarded by proper barriers, in compliance with all current city, state and federal safety codes, rules, ordinances and regulations. (Code 1959, §22-29; Ord. of 6-14-78)

Cross reference--Parking alongside or opposite street excavation, §14-46(11).

SECTION 26-32. COVER OR LIGHTS AT NIGHT.

Except in a situation of absolute necessity, no excavation made pursuant to an approved plan under this article shall be allowed to remain uncovered during the night. In cases where such an excavation is, from absolute necessity, left uncovered during the night, the person filing an approved plan shall place a light, by lantern or other sufficient means, over the same. In case the excavation is in the nature of a trench or ditch, lights shall be placed continuously along the line thereof. All warning devices placed in accordance with this section shall comply with all current city, state and federal safety codes, rules, ordinances and regulations. (Code 1959, §22-30; Ord. of 6-14-78)

ARTICLE III. LOUDOUN STREET MALL

DIVISION 1. GENERALLY

SECTION 26-33. SPECIAL PROVISIONS RELATING TO LOUDOUN STREET MALL.

- (a) The Loudoun Street Mall shall extend one-way south, between Piccadilly Street and Boscawen Street and Boscawen Street and Cork Street, and it shall be unlawful for any person to operate, drive, ride, push, or park any vehicle thereon. The operation and use of bicycles, skateboards, scooters, and roller skates, to include in-line skates, is prohibited. This subsection shall not apply to:
 - 1. Motor vehicles, other than tractor-trailers, having a gross weight of less than twenty-four thousand (24,000) pounds and using the Mall between the hours of 6:00 A.M. and 11:00 A.M. and 4:00 P.M. and 6:00 P.M. of

WINCHESTER CODE

any day for commercial pickup, commercial delivery, and utility or maintenance services.

2. Passenger vehicles crossing the mall in a westerly direction between the alley on the north side of the Presbyterian Church and Winchester Parking Authority Lot No. 8 for the purpose of discharging and receiving passengers from the Presbyterian Church pre-school.
- (b) The chief of police or his designee may issue a special use permit for vehicles using the Loudoun Street Mall for funerals, Sunday morning church services, weddings, other special events, construction, city maintenance and repair work.
- (c) No vehicles permitted to use the Loudoun Street Mall shall be driven or operated at a speed in excess of ten (10) miles per hour, and all such vehicles shall be driven or operated one-way south, except as provided in (a)(2), above.

DIVISION 2. SIDEWALK CAFES

SECTION 26-34. PERMIT REQUIRED.

No person, firm, association, partnership, or corporation shall operate a sidewalk café on Loudoun Street Mall without benefit of a written permit issued by the City, and any such person, firm, association, partnership, or corporation who violates this Section shall be guilty of a violation of Section 15.2-2107 of the Code of Virginia, 1950, as amended, as is in effect on September 14, 1999, and punished as therein provided, said Virginia Code Section being incorporated herein by reference. As used herein, the phrase “sidewalk café” shall mean any group of tables, chairs, benches, and suitable decorative devices maintained upon the surface of Loudoun Street Mall for the purpose of selling food, refreshments, and beverages of all kinds to the general public as an extension of a restaurant licensed under the Regulations of the State Health Department and operating contiguous to the Loudoun Street Mall.

SECTION 26-35. APPLICATION FOR SIDEWALK CAFÉ PERMIT.

Any restaurant licensed under the Regulations of the State Health Department and operating contiguous to the Loudoun Street Mall may apply to the Director, Old Town Development Board, for the permit described in Section 26-34 on forms provided for the purpose. In addition to the completed form, the applicant shall also provide the following items in order to file a complete application:

STREETS AND SIDEWALKS

1. A fee in the amount of Fifty Dollars (\$50.00).
2. A Certificate of Appropriateness from the Winchester Board of Architectural Review certifying that the applicant's design for café' structures, furnishings, signage and placement of same meet the requirements enforced by that Board. The applicant must submit to the said Board a site plan indicating the location of the proposed café, a scaled sketch depicting the layout of tables, chairs, signage, etc. The area of the café must be delineated by an approved enclosure, may extend no wider than the applicant's storefront, and may not extend into the Loudoun Street Mall area from the storefront more than fifteen (15) feet, or less if necessary to maintain an emergency lane at least sixteen (16) feet wide down the center of the Mall. In addition, the site plan must show a clear pedestrian path of three (3) feet in width between the delineated enclosure and the front of the applicant's business, unless the business is licensed to serve alcoholic beverages.
3. Evidence showing that the applicant has obtained a license to operate as a restaurant from the State Health Department and the City of Winchester, and that all of the applicant's tax obligations to the City, to expressly include real or personal property tax, business license tax, and meals tax, have been satisfied and are current.
4. A signed agreement, on a form approved by the City Attorney, in which the applicant agrees to hold the City, its officers, agents, and employees, harmless from any claims for damages to person or property growing out of any activity with the applicant's activities conducted in connection with the permit herein described or caused by the operation or location of the café on the City's property. The applicant shall also provide a Certificate of Insurance, which shall be currently maintained throughout the term of the permit, indicating that the City is an additional insured on a policy of liability insurance issued to the applicant by an insurance company licensed to do business in Virginia with a single limit of not less than \$500,000.00.
5. If alcoholic beverages are to be sold by the applicant, the applicant must also provide evidence that it has a valid license for same issued by the Virginia Alcoholic Beverage Control Board, and that it specifically meets that Board's requirements for "outside terraces or patio dining area". As a continuing condition of the permit herein described, the applicant must post a sign stating that "the drinking of alcoholic beverages or carrying of an open container that contains alcoholic beverages is unlawful and prohibited outside the delineated area of the Sidewalk Café".

SECTION 26-36. SAME—PERMIT TERM; CONDITIONS.

Any permit issued pursuant to this Division shall be non-transferable and shall be valid from January 1st through December 31st of each year, or for any part thereof. The application fee will remain the same regardless of the date received, and the fee will not

WINCHESTER CODE

be refunded or pro-rated based on the date of the application. Upon expiration or revocation of any such permit, the restaurant must apply for a new permit to continue operation of a sidewalk café, and must complete all of requirements listed in Section 2-35 of this Code in order to do so.

As a condition of obtaining and keeping such a permit for the full one-year term specified above, the restaurant is deemed to have agreed to the following terms and conditions:

1. All cafes will be of such design so as to be easily removed for special events, snow removal, emergency access, or other circumstances which require that Loudoun Street Mall be cleared of all such cafes, as determined by City Council or by the Chief of Police. A directive from the Chief of Police or the City Council to clear the area of all furniture, fixtures, decorations, etc., connected with the café operation shall be promptly complied with by the restaurant without question and without unnecessary delay, and the area shall remain cleared of such material until directed otherwise by City Council or the Chief of Police.
2. The use of concrete furniture, chairs, benches, planters, or any other such items is expressly prohibited.
3. The entire area delineated for the sidewalk café must be maintained in a neat and orderly fashion, whether or not the area is actually in use. When in use, the area shall be periodically cleaned throughout the business day, and, especially, at the end of each business day. All food shall be provided by waiter or waitress service, unless self-service operations are approved as a part of the permit. Extensions or enlargements of the area delineated for the café beyond those described in the restaurant's application are expressly prohibited.
4. All furniture, fixtures, decorations, etc. connected with the operation of the café shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance to patrons.
5. The café shall operate only when the restaurant to which a permit has been issued is allowed to operate. In addition, the restaurant shall be responsible to see to it that patrons of both the café and the restaurant violate no laws of the State or Ordinances of the City, to expressly include the City's Noise Ordinance, during such hours of operation. A business holding a permit shall have the right to limit access and occupancy to only bona fide paying customers, and shall have the same right to deny access or service in the café area as it enjoys in its own premises; Provided, However, that no person shall be denied access or service in a sidewalk café purely on the basis of race, religion, national origin, sex, age or physical disability.

STREETS AND SIDEWALKS

SECTION 26-37. SAME; REVOCATION AND APPEAL.

The permit issued under this Division shall be revoked by the City Manager, by letter to the restaurant sent ordinary first-class mail or hand delivered to the address shown on the permit, upon receipt of competent evidence of the following:

1. Evidence that any of the requirements for application described in Section 26-35 of this Code are not being maintained during the term of the permit, including , but not limited to, withdrawal of the Certificate of Appropriateness or evidence that the café is being operated outside its terms; revocation or suspension of the restaurant's Health Department license or its ABC Board license (where applicable); lapse or cancellation of the restaurant's liability insurance; and failure to remain current as to all City tax obligations, especially the Meals Tax;
2. Evidence that any of the conditions of the permit as listed in Section 26-36 of this Code are being violated, especially including, but not limited to, evidence that the behavior of café patrons or other aspects of the café operation are generating violations of either State or City Code, particularly the Noise Ordinance.

The restaurant may appeal the decision of the City Manager to the City Council by noting such an appeal to the Mayor, in writing, within ten (10) calendar days, but the permit shall remain revoked while such appeal is pending. Upon receipt of the written notice that such an appeal has been lodged, the Mayor shall cause the matter to appear on the Agenda for the next scheduled meeting of the Common Council, whether regular or special, and the Council shall either affirm the City Manager's decision or restore the permit at that time. If the Council affirms the City Manager's decision, then the Council's decision may be appealed to the Circuit Court of the City of Winchester in the same way as the ordinances of Council may be appealed, but the Council's decision shall be final and irrevocable if a Petition seeking an appeal of that decision is not filed with the Clerk of the said Court within thirty (30) calendar days of the date Council acts. (Ord. No. 036-99, 12-14-99)

(NOTE: THE EFFECTIVE DATE OF THIS ORDINANCE SHALL BE JANUARY 1, 2000.